(50)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri H.L. Dattu, C.J.

Writ Petition No.5898 of 2005

Petitioner Ador Welding Limited, A company incorporated and registered under Indian Companies Act, having its Registered Office at Ador House, 6K, Dubash Marg, Fort Mumbai. One of its Unit is situated at Industrial Estate Raipur, the Company Represented by its Principal Officer S. Manoj, Manager Accounts & Administration

Vs.

Respondents

1. Shri Abdul Wahid, S/o Late Shri Abdul Samad, R/o 24 Piyush Colony, Amlidih, Post – Ravigram, Raipur, Tehsil & District – Raipur, Chhattisgarh
2. Assistant Labour Commissioner, Labour Commissioner Office, Raipur, Chhattisgarh

Present: Shri Gautam Bhaduri, counsel for the petitioner.
Shri Bhaskar Payashi, counsel for respondent No.1.

ORAL ORDER
(Passed on 20th March, 2007)

The Controlling Authority had passed an adverse order against the petitioner on 17-5-2004 and the same was served on 22-6-2004. The petitioner had preferred an appeal before the First Appellate Authority on 19-7-2004. Along with the appeal, the petitioner had not deposited the amount awarded by the Controlling Authority within the time prescribed under the second proviso to sub-Section (7) of Section 7 of the Payment of Gratuity Act, 1972 ("the Act" for short). The Appellate Authority has rejected the appeal primarily on the ground, that the petitioner had failed to comply with the mandatory provision of second proviso to sub-Section (7) of Section 7 of the Act. Being aggrieved by the same, the petitioner is before this Court in this petition filed under Articles 226 and 227 of the Constitution of India.

(51)

(2) Shri Gautam Bhaduri, learned counsel appearing for the petitioner would submit that the petitioner could not deposit the amount awarded by the Controlling Authority for various reasons, which are explained in the writ petition. Therefore, he submits that the delay in filing the appeal may be condoned and the Appellate Authority may be directed to decide the appeal on merits.

(3) *Per contra*, learned counsel appearing for respondent No.1 justifies the orders passed by the First Appellate Authority.

(4) I have carefully perused the reasons assigned by the petitioner in not making the deposit within the time prescribed under the second proviso to sub-Section (7) of Section 7 of the Act. The explanation offered therein, in my opinion, is fully satisfactory. Secondly, if the delay in filing the appeal is condoned it will not cause any prejudice to the respondents. Therefore, delay in filing the appeal is condoned.

(5) In view of the above, this petition is allowed in part. The order passed by the First Appellate Authority is set aside. The matter is remanded back to the First Appellate Authority to decide the appeal on merits without reference to the period of limitation. All the other contentions of both the parties are left open.

Sd/-
Chief Justice